

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case 29-CB-276904	Date Filed 05/07/2021

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name DC37 AFSCME		b. Union Representative to contact Shaun D. Francois Title: President	
c. Address (Street, city, state, and ZIP code) 125 Barclay Street NY New York 10007		d. Tel. No. (212) 815-1000	e. Cell No.
		f. Fax No.	g. e-Mail
h. The above-named organization(s) or its agents has (have) engaged in and is (are) engaging in unfair labor practices within the meaning of section 8(b), subsection(s) (list subsections) (1)(A),(3) of the National Labor Relations Act, and these unfair labor practices are unfair practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) --See additional page--			
3. Name of Employer Lutheran Social Services of NY		4a. Tel. No. (b) (6), (b) (7)(C)	b. Cell No. (b) (6), (b) (7)(C)
		c. Fax No.	d. e-Mail (b) (6), (b) (7)(C)
5. Location of plant involved (street, city, state and ZIP code) 357 9th St NY Brooklyn 11215		6. Employer representative to contact (b) (6), (b) (7)(C) Title: (b) (6), (b) (7)(C)	
7. Type of establishment (factory, mine, wholesaler, etc.)	8. Identify principal product or service	9. Number of workers employed	
10. Full name of party filing charge (b) (6), (b) (7)(C) LSSNY		11a. Tel. No. (b) (6), (b) (7)(C)	b. Cell No. (b) (6), (b) (7)(C)
		c. Fax No.	d. e-Mail (b) (6), (b) (7)(C)
11. Address of party filing charge (street, city, state and ZIP code.) 357 9th street NY Brooklyn 11215			
12. DECLARATION I declare (b) (6), (b) (7)(C) read the above charge and that the statements therein are true to the best of my knowledge and belief. By (b) (6), (b) (7)(C) (signature of representative or person making charge) (Print/type name and title or office, if any) Title: 357 9th street Brooklyn NY 11215 Address (date) 05/06/2021 07:33:43 PM		Tel. No. (b) (6), (b) (7)(C) Cell No. (b) (6), (b) (7)(C) Fax No. e-Mail (b) (6), (b) (7)(C)	

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

Basis of the Charge

8(b)(1)(A)

Within the previous six months, the above-named labor organization has restrained and coerced employees in the exercise of rights protected by Section 7 of the Act by refusing to process the Charging Party's grievance for arbitrary or discriminatory reasons or in bad faith.

8(b)(3)

Within the previous six months, the above-named labor organization has failed and refused to bargain in good faith with the employer.

LEGAL DEPARTMENT

Telephone: 212-815-1450
Fax: 212-815-1440

ROBIN ROACH
General Counsel

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Associate General Counsel

ERICA GRAY-NELSON
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Dena Klein
Aaron S. Amaral
Terri Nilliasca
Onya Brinson
Seth York
Michael Coviello

July 20, 2021

Jaime Cosloy
Field Examiner
National Labor Relations Board
Region 29
100 Myrtle Avenue
Suite 5100
Brooklyn, NY 11201-4201

Re: Case No. 29-CB-276904
District Council 37, AFSCME, AFL-CIO
(Lutheran Social Services)

Dear Ms. Cosloy:

This letter sets forth the Position Statement of District Council 37, American Federation of State, County and Municipal Employees, AFL-CIO ("DC 37" or "Union") regarding the above-docketed charge, filed pursuant to Sections 8(b)(1)(A) and 8(b)(3) of the National Labor Relations Act ("Act"). For the reasons set forth below, the charge should be dismissed.

On May 7, 2021, the Charging Party filed a charge with the National Labor Relations Board ("NLRB") alleging that within the past six months, the Union has failed and refused to process an unspecified grievance for reasons that are arbitrary, invidious, or otherwise unlawful. In addition, the Charging Party alleged that DC 37 failed and refused to bargain in good faith with the employer.

In order for there to be a violation of the duty of fair representation imposed by National Labor Relations Act ("Act"), there must be some refusal by the Union to process a Charging Party's grievance. In this case, the Union did not refuse to process the Charging Party's grievance. The Union has no record of a request from the Charging Party that a grievance be filed or that within the six-month prior to the filing of the charge that there was no known contractual violation which affected the Charging Party. As such, this charge has no merit as the Union did not fail or

refuse to process the Charging Party's grievance. Further, at no point in the six-months prior to Charging Party's filing of the charge did the Union fail or refuse to bargain with the employer.

Therefore, the charges must be dismissed.

DC 37 is an amalgam of 63 local unions representing some 150,000 employees in the various public agencies, authorities, boards, corporations, cultural institutions, and not-for-profit organizations of the City of New York. Lutheran Social Services of New York (hereinafter "LSSNY" or "Employer") is an organization which offers a broad range of social services programs. DC 37 and LSSNY are parties to a collective bargaining agreement ("CBA") which expired on December 1, 2020.

DC 37 (b) (6), (b) (7)(C) assigned to the LSSNY bargaining unit. (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C) other DC 37 bargaining units and their individual contracts, all of which encompass a combined total of approximately 7,000 members. In addition to the (b) (6), (b) (7)(C) DC 37 bargaining units for which (b) (6), (b) (7)(C) (b) (6), (b) (7) for no fewer than (b) (6), (b) (7)(C) additional DC 37 bargaining units and has additional (b) (6), (b) (7) responsibilities. (b) (6), (b) (7)(C) for DC 37 bargaining unit members at LSSNY until (b) (6), (b) (7)(C) 2021.

On (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) sent a letter to LSSNY to notify the Employer that the Union intended to modify the collective bargaining agreement and seeking mutually-agreeable dates to meet to commence negotiations. As stated previously, the CBA between the Union and the Employer expired on December 1, 2020.

(b) (6), (b) (7)(C), the Charging Party and the other members of the bargaining committee met on January 19, 2021 to discuss contract demands and strategy. (b) (6), (b) (7)(C) met with the bargaining committee—including the Charging Party—again met on January 27, 2021 to continue internal discussions regarding contract demands and strategy. After the January 27, 2021 meeting, (b) (6), (b) (7)(C) compiled information gathered at the two January meetings and began drafting formal contract proposals to present to LSSNY management.

Following the January 27, 2021 meeting, (b) (6), (b) (7)(C) became embroiled in intense bargaining for another unit for which (b) (6), (b) (7)(C) is responsible, DC 37 Locals 2507 and 3621, which represent approximately 4,500 Emergency Medical Service ("EMS") workers. Bargaining on behalf of EMS workers required dozens of formal bargaining sessions, even more caucuses, and still many more conference calls between (b) (6), (b) (7)(C) and representatives from the New York City Office of Labor Relations.

Between February 2021 and May 2021, Charging Party made no efforts to contact (b) (6), (b) (7)(C) regarding bargaining. After Charging Party filed the instant Charge, (b) (6), (b) (7)(C) reestablished contact with the bargaining committee and continued contract negotiations in earnest. (b) (6), (b) (7)(C) Charging Party, and the bargaining committee met on or about June 23, 2021 and contract demands were finalized on or about June 28, 2021. (b) (6), (b) (7)(C) scheduled the first bargaining session with LSSNY management on July 20, 2021.

It is axiomatic that a Union only breaches its duty of fair representation to a member only if it acts in an arbitrary, capricious, or discriminatory manner in regard to a matter within its exclusive control. A Union breaches the duty of fair representation occurs “only when a union’s conduct toward a member of the collective bargaining unit is arbitrary, discriminatory, or in bad faith.” *Vaca vs. Sipes*, 386 U.S. 171, 190 (1967). This rule is equally applicable in the context of contract negotiations. *Air Line Pilots Ass’n, International v. O’Neill*, 499 U.S. 6, 67 (1991).

The Charging Party appears to take issue with the delay in resolution of bargaining for a successor CBA. However, a delay in bargaining a successor agreement is a violation of the Act only if “in light of the factual and legal landscape at the time of the of the unions actions, the union behavior is so far outside a wide range of reasonableness as to be irrational.” *Id.* In the instant case, the Union has finite resources. As stated previously, the Union’s limited resources were allocated to a different bargaining unit for a brief period. Putting LSSNY negotiations on “hold” was not done capriciously or in bad faith but rather as a reaction to exigent circumstances which demanded immediate and close attention. An 8(b)(3) charge is meant to address a Union’s conduct with regards to an employer during the process of bargaining. As no formal bargaining took place between the Union and the Employer, there can also be no substantiation to the claim that the Union failed or refused to bargain in good faith. It must also be noted that any issue the Charging Party may have with the pace of bargaining has been remedied, as at the time of the filing of this letter, formal bargaining will have commenced.

In addition, in this instant case, the Union did not fail or refuse to process the Charging Party’s grievance. The Union has no record of a request to file a grievance and is not aware of any contractual violation which affected the Charging Party for which a grievance could have been filed. Simply put, there existed no grievance which the Union could process in any matter, let alone in an arbitrary, capricious, or discriminatory manner.

Based on the foregoing, the Union has not violated its duty of fair representation under the Act. The Union did not process any grievance on behalf of the Charging Party because Charging Party did not seek out the Union to file a grievance on his behalf and the Union was not on notice of any contractual violation which affected the Charging Party. In addition, the Union’s approach to bargaining a successor CBA at LSSNY was not for any arbitrary, capricious, or discriminatory reason but rather based on the Union’s limited resources and exigent circumstances.

Therefore, the charge must be dismissed. Please do not hesitate to contact me if you any questions concerning this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Seth York', with a stylized, cursive script.

Seth York



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 29
Two Metro Tech Center
Suite 5100
Brooklyn, NY 11201-3838

Agency Website: www.nlrb.gov
Telephone: (718)330-7713
Fax: (718)330-7579

July 26, 2021

Seth York
Assistant General Counsel
District Council 37, AFSCME, AFL-CIO
125 Barclay St., 5th Fl.
New York, NY 10007

Re: DC37 AFSCME (Lutheran Social Services
of New York)
Case 29-CB-276904

Dear Mr. York:

This is to advise you that I have approved the withdrawal of the charge in the above matter.

Very truly yours,

Kathy Drew King
Regional Director

cc: Shaun D. Francois, President
District Council 37, American Federation
of State, County, and Municipal
Employees, AFL-CIO
125 Barclay Street
New York, NY 10007

(b) (6), (b) (7)(C)

Lutheran Social Services of NY
357 9th St
Brooklyn, NY 11215